THE HIGH COURT OF UTTARANCHAL AT NAINITAL.

Civil Revision No. 29 of 2006

1. State of Uttaranchal through Collector Udham Singh Nagar.
2. National High Way Division, P.W.D., Haldwani through Executive Engineer.

…Revisionists.

Versus

Mohd. Maksood, S/O Makbool Ahmed,
R/O Mohalla Nai Basti, Vijay Nagar, Tehsil Kashipur,
District Udham Singh Nagar.

…Respondent.

Sri Bhupender Singh, learned Standing Counsel for the revisionist-State.

Date May 18, 2006.

PC:
(Hon. B.S. Verma, J.)

This revision has been filed under Section 115 of the Code of Civil Procedure against the order, dated 16-3-2006, passed by the Additional Civil Judge (Junior Division) Kashipur (Udham Singh Nagar), whereby the learned Judge decided the Additional Issue No.4 regarding jurisdiction of the civil court against the revisionists.

Brief facts of the case are that the respondent filed a suit (Civil Suit No. 47 of 1998) for permanent injunction restraining the revisionists from evicting him from the land in question bearing Gata No. 392/1. The suit was contested by the revisionists by filing its written statement and it was stated that the land in question is a National Highway land bearing No. 121 and is government property and the same is in their possession. The plaintiff-respondent had attempted to raise a construction after encroachment on the government land, which was defeated in violation of the provisions of Road Side Control Act.

On the pleadings of the parties, the learned Trial Court framed issues and an additional issued was framed regarding the bar

of jurisdiction of civil court in view of the provision of Sections 14 and 15 of The Control of Naintional Highways (Land and Traffic) Act, 2002 (***for short the Act***) which came into force w.e.f. 27-1-2005. The said issue has been decided vide order dated 16-3-2006 holding that since the suit is pending prior to enforcement of the said Act, the civil court has jurisdiction to entertain the suit and it is not barred by the provision of Section 15 of the said Act.

The revision has been filed on the ground that the learned Court below committed a manifest error of law in holding that the provisions of the said Act were not applicable to the pending suits. It is asserted that by virtue of the provisions of Sections 14 and 15 of the said Act, the jurisdiction of civil courts has been excluded regarding all the matters pertaining to the National Highways and the civil court ought to have returned the plaint with a direction to raise the matter before the competent authority under the said Act.

At the very outset, it may be noted that Section 1(3) of the aforesaid Act provides ***that "it shall come into force on such date as the Central Government may by notification in the Official Gazette, appoint and different dates may be appointed for different provisions of this Act."***

Section 14 of the Act provides for jurisdiction, powers and authority of Tribunal, which reads as under:-

"A Tribunal shall exercise, on and from the appointed day, the jurisdiction, powers and authority to entertain appeals from the orders passed or actions (expect issuance or serving of notices) taken under sections 26, 27, 28, 36, 37 and 38 by the Highway Administration or an officer authorised on its behalf, as the case may be."

Section 15 deals with Bar of jurisdiction and it is provided that “on and from the appointed day, no court (except the Supreme Court and a High Court exercising jurisdiction under articles 225 and 227 of the Constitution) or other authority, except the Tribunal shall have, or be entitled to exercise, any jurisdiction, powers or authority in relation to the matters specified in section 14.”

The provisions of the Act came into force since 27th January, 2005. This fact has not been disputed by the learned Standing Counsel. It is an admitted fact that the Civil Suit No. 47 of 1998, which was filed by the Opposite Party-respondent was instituted in the year 1998. The learned Standing Counsel could not show any provision under the said Act, which could lead to an inference that the jurisdiction of civil court is barred in respect of pending suits filed against the revisionists by any person prior to the coming into force of the Act. Moreover, it has not been pleaded or argued by the learned Standing Counsel that the Civil Suit filed by the respondent against the State and pending before the trial court is a result of the orders or actions taken under Sections 26 to 28 and 36 to 38 of the Act.

In view of above, I find to infirmity in the impugned order. the revision preferred by the State is devoid of merit and is liable to be dismissed at admission state.

The revision is hereby dismissed in-limine.

(B.S.Verma, J.)

RCP